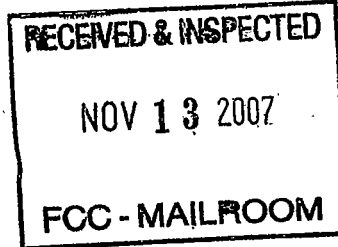


November 9, 2007



Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

DOCKET FILE COPY ORIGINAL
CC: 96-45
CC: 06-122

RE: CC Docket No. 96-45
New Edge Network, Inc. – Filer ID 820304
Appeal of USAC Decision Dated September 11, 2007
And Waiver of Accrued Late Fees

Dear Commission Secretary,

By this letter New Edge Network, Inc. (New Edge) is appealing the denial of New Edge's appeal to USAC. USAC's denial is dated September 11, 2007 and is attached for reference. In the most basic terms, the New Edge appeal to USAC asked that USAC accept a revised 499Q that was filed past USAC's 45-day revision window. Additionally, New Edge is requesting a waiver of late fees that have accrued since February 2007 and will continue to accrue until the FCC issues its decision.

New Edge filed its November 1, 2006 499Q worksheet in a timely manner. New Edge typically files its quarterly worksheets through USAC's electronic filing system. The USAC electronic filing system was malfunctioning when New Edge attempted to electronically file its November 1, 2006 499Q worksheet, therefore, New Edge was forced to file a paper copy of its worksheet. During the completion of the paper copy of the 499Q, New Edge inadvertently populated the "international" revenue line as well as the "interstate" revenue line, which had the affect of double-stating the projected income of New Edge. These entries are side by side on the form and the exact same amount of "international" revenue was stated as that stated for interstate revenue.

The result of the filer's errors, and the lack of review by USAC caused USAC to begin billing New Edge USF fees for twice the amount of projected revenue in January, February and March 2007. This amounted to an overcharge to New Edge of **\$1,325,146.95**

New Edge became aware of its misstated revenues when the January 2007 invoice from USAC arrived. New Edge immediately filed a revised worksheet, on

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January 26, 2007, although the 45-day revision window had elapsed on December 15, 2006. In addition, New Edge also made several phone calls to USAC employees and sent emails requesting that the obvious error be remedied by USAC by accepting the revised worksheet and correcting the first quarter 2007's invoices. New Edge continued to follow up with USAC for answers as it would be several days between the New Edge inquiry and any reaction from USAC. New Edge was hopeful that USAC would see that the error was quite obvious and take the logical action of correcting the error immediately. To do this would have entailed several clicks in USAC's electronic billing system and a revised invoice sent to New Edge.

USAC maintains that its automated notification system generated an electronic notice to New Edge advising that New Edge would see a huge increase due to USAC in the first quarter 2007 as a result of the inflated revenues. However, a thorough search of email boxes at New Edge was conducted, as well as a search of its main server, and no such email notification was found. Given the malfunction of the USAC system in November of 2006 it is unclear as to whether there was a failure on the part of New Edge's email system or another malfunction of the USAC system itself.

New Edge acknowledges that "USAC does not have responsibility for revenue reporting errors on the forms committed by New Edge." USAC pointed that out in its decision in the original rejection of the New Edge request and in the decision on appeal. New Edge acknowledges that it made the reporting error on its November 1, 2006 499Q. However, New Edge was not aware of the error until the January 2007 invoice arrived since the automatic notice USAC claims to have sent was never received by New Edge. Without receipt of this notice, New Edge had no visibility into the error until after the December 15, 2007 deadline to revise the 499Q filing.

A very quick review, by USAC, early on in this appeal, would have clearly shown USAC that New Edge has never filed a 499Q with "international" revenues in the history of the Company. No such revenues have been filed in subsequent filings either as no such revenues exist. That said, New Edge finds it hard to believe that USAC's practice of knowingly carrying forward an inaccurate charge of this magnitude is a "fair billing practice", and condoned by the FCC. While New Edge acknowledges that the error was made on the part of New Edge, the error was brought to the attention of USAC at the earliest possible point. To continue hiding behind a 45 day window for revising the 499Q in such an obvious case of human error is not only ridiculous, but also punitive. New Edge is a medium size CLEC with limited cash flow. Paying an additional, nearly, \$500,000 a month in USF fees for three months is a totally unnecessary hardship, particularly when it is for a mistake caught early on and acknowledged early on, by both parties.

Additionally asking New Edge to pay those dollars and simply wait for 18 months for USAC to give a portion of those funds back at the time of true up is equally punitive and totally outside the realm of reasonableness.


New Edge is asking the FCC to intervene and to advise USAC to accept the revised 499Q sent by New Edge and received by USAC on January 26, 2007. In addition, New Edge asks the FCC to waive the late payment penalties associated with these charges as they continue to mount while this seemingly unnecessary appeal has been flowing thru the process.

Records will show that New Edge has paid its current (actual) monies owed to USAC throughout 2007, while we have waited more than five months for USAC to make its determination.

New Edge will continue to be current in its payments to USAC, paying the correct monthly fees due until this issue is resolved

Should you have any further questions or concerns, please do not hesitate to give me a call at 1-360-906-9775.

Very Respectfully Submitted,



Penny H. Bewick
Vice President-External Affairs
New Edge Networks, an EarthLink Company
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Phone: 360-906-9775
Cell: 503-730-4019
Fax: 360-737-0828

Cc: Regina Dorsey, FCC Office of Managing Director
Hillary DeNigro, FCC Enforcement Bureau
Trent Harkrader, FCC Enforcement Bureau



*Kathleen -
Please file an appeal
immediately!!!*

Administrator's Decision on Contributor Appeal

BY CERTIFIED MAIL

September 11, 2007

Kathleen Shotsky
New Edge Network, Inc.
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98661

Re: New Edge Network, Inc. (499 Filer ID # 820304)
Letter of Appeal dated April 6, 2007

Dear Ms. Shotsky:

The Universal Service Administrative Company (USAC) has completed an evaluation of your letter of appeal submitted on behalf of New Edge Network, Inc. (New Edge) dated April 6, 2007 (Appeal). New Edge's Appeal requests acceptance of a late-filed revision to the company's November 2006 FCC Form 499-Q (November Form 499-Q or November Worksheet).¹ As discussed in more detail below, USAC hereby denies New Edge's appeal.

Procedural Background

Federal Communications Commission (FCC) regulations require carriers, unless they meet the *de minimis* exemption² to submit an FCC Form 499-Q (Form 499-Q or Worksheet) reporting projected revenue for the upcoming quarter. USAC relies on revenue as reported in order to calculate a carrier's universal service obligation.³

The November Form 499-Q, which is the subject of New Edge's Appeal, had a due date of November 1, 2006. The revision window for quarterly Worksheets is 45-days.⁴ Therefore, the revision deadline for the November Worksheet was December 15, 2006.

¹ Although not relevant to the November Worksheet at issue in its Appeal, New Edge expresses concern regarding 2004 adjustments to which USAC responds here. Recent review of New Edge's account indicates transactions which resulted from a USAC billing error were corrected during first quarter 2007 and that on March 1, 2007 a written explanation of the invoice line items was provided to New Edge.

² See 47 C.F.R. §§ 54.708.

³ See 47 C.F.R. §§ 54.709 and 54.711.

⁴ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans*

New Edge filed its original November Worksheet on November 1, 2006 and a revised Worksheet on January 26, 2007. USAC processed the original Worksheet. However, USAC, in accordance with FCC regulations⁵ and by letter dated February 7, 2007, rejected the revised Worksheet because it was received by USAC on January 26, 2007—well after the revision deadline listed above.

The FCC in recent decisions explained that it established a 45-day revision window to give contributors an opportunity to revise their quarterly Worksheets while adequately maintaining appropriate USF funding in a given quarter.⁶ New Edge had opportunities to file revisions and can make adjustments as part of an annual reconciliation.⁷

On April 1, 2008, New Edge will be required to submit a 2008 499-A reporting 2007 revenue. The annual true-up process will compare New Edge's reported actual 2007 revenue to projected revenue reported on the quarterly forms, including the revenue projected for first quarter of 2007, which was reported on the November Form 499-Q at issue in the appeal. Therefore, assuming, but not concluding, that New Edge's billings should be adjusted, New Edge will receive adjustments or credits, as appropriate, on its invoices beginning in July 2008.

New Edge explains it "...believes it is punitive to be made to carry incorrect charges throughout the entire 2007 calendar year, and not receive relief until April 1, 2008."⁸ The FCC in recent decisions explained that the reporting entity has the responsibility for submitting its revenue information and certifying it is correct.⁹ It was New Edge's

with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, FCC 02-329 (2002) (*Interim Contribution Methodology Order*), ¶ 36; see also, Appendix C, p.82 (February 2003 FCC Form 499-Q Instructions).

⁵ *Id.*

⁶ See *Federal-State Joint Board on Universal Service, Request for Review by: ABS-CBN Telecom North America, Incorporated of Decision of Universal Service Administrator; Southwest Communications, Inc. of Decision of Universal Service Administrator; and Trans National Communications International, Inc., Decision of Universal Service Administrator*, CC Docket Nos. 96-45, 2007 WL 784322, DA-07-1276 (2007) (*USF Reconciliation Process Order*), ¶ 2 ("Beginning in 2003, contributors have had the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing. In addition, all filers must submit an annual Telecommunications Reporting Worksheet (FCC Form 499-A), which contains the filer's actual revenues from the previous calendar year. To the extent that contributors have under- or overestimated their revenue information and have paid too little or too much, the FCC Form 499-A is used to true-up universal service billings and payments.").

⁷ See *Interim Contribution Methodology Order*, ¶ 36 ("Similar to existing policies, contributors will have an opportunity to correct their projections up to 45 days after the due date of each Form 499-Q filing and through the annual true-up process.")

⁸ See *New Edge Letter of Appeal*.

⁹ See *USF Reconciliation Process Order*, ¶ 9 ("We note that this form, like the FCC Form 499-A, requires an officer of the reporting entity to certify that the information contained therein is accurate and that the revenue projections represent a good-faith estimate."); see also, *Interim Contribution Methodology Order* ¶ 34 ("We also will require an executive officer to certify that the projections of gross-billed and collected

responsibility to correctly file its forms, and if it would have done so, the current situation would not have occurred.

New Edge's Appeal states errors were made on its original Worksheet because of difficulties with USAC's online Form 499 filing system and that the company was unaware of a potential reporting error until receipt of the January 2007 invoice. Although USAC was unable to determine whether the online filing difficulties were due to a system error, USAC accommodated New Edge's request to consider the Worksheet timely filed and did not impose a late filing fee. USAC does not have responsibility for revenue reporting errors on the forms committed by New Edge. Nonetheless, USAC notified New Edge via email on November 3, 2006 of a significant increase in revenue reported on the November Worksheet. This email was sent to New Edge at the email address listed on its November 2006 499-Q. New Edge had sufficient time before the expiration of the 45-day revision deadline on December 15, 2006 to file a revised Form 499-Q, which it did not do.

Pay and Dispute Policy

New Edge states it did not pay in total, and intends not to pay, the portion of the charges which were based on the reporting error made on its November Worksheet. It is the responsibility of the contributor to file correct revenue so that USAC may accurately assess universal service fund obligations. It is USAC's policy to enforce any late payment fees associated with unpaid balances. If there is an error made by the contributor on any FCC Form 499, the contributor is still responsible for paying USF contribution amounts computed based on the contributor's revenue information reported on the form, regardless of whether the contributor reported the information erroneously. Failure to pay USF contribution amounts when due will result in late charges being assessed on the amount outstanding.

The "Frequently Asked Questions" section of USAC's website provides guidance that specifically advises contributors that intend to file revisions to pay charges or risk receiving late payment fees. Further, the USAC website explains that USAC must rely on the contributor to deliver accurate information and that billings are based on the revenue as reported. The USAC website explains that late payment fees will not be waived unless the dispute is determined to be the result of a USAC error.¹⁰

revenue included in the FCC Form 499-Q represent a good-faith estimate based on company policies and procedures.").

¹⁰ See USAC website section titled "Paying USAC Bill during Appeal Process" at: <http://www.usac.org/fund-administration/contributors/file-appeal/>.

Kathleen Shotsky
New Edge Network, Inc.
September 11, 2007
Page 4 of 4

Decision on Appeal: Denied

USAC's review indicates because a revision to New Edge's revised November Form 499-Q was received after the FCC-established 45-day revision window USAC was correct in rejecting the revised Worksheet. Accordingly, New Edge's Appeal is denied.

If you wish to further appeal this decision, you may file an appeal with the FCC. Detailed instructions for filing appeals are available at:

<http://www.universalservice.org/fund-administration/contributors/file-appeal>

Sincerely,

USAC

Universal Service Administrative Company

cc: Regina Dorsey, FCC Office of Managing Director
Hillary DeNigro, FCC Enforcement Bureau
Trent Harkrader, FCC Enforcement Bureau